

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1471 of 2016

1 The State of Maharashtra,
through: The Collector, Beed

2 The Executive Engineer,
M.I.L.S. Division Beed
Tq. & Dist. Beed

Appellants

Versus

1 Dashrath S/o Narayan Tarte
age: Years, occu: Agril.,
R/o Sarate-Wadgaon,
Tq. Ashti, Dist. Beed

2 Lahu S/o Dashrath Tarte,
age: Years, occu: Agril.,
R/o As above

Respondents.

Mr. S.P. Deshmukh, Assistant Govt. Pleader for the appellants
Mr. C.K. Shinde, advocate for the respondents

CORAM : **P.R. BORA, J**

(Date : 19th September, 2016.)

ORAL JUDGMENT

1 The State has filed the present Appeal against the Judgment
& Award passed in Land Acquisition Reference (LAR) No.293/2009
on 9.1.2012 by the district Judge-II, Beed.

2 The subject land was acquired for the purpose of construction of village tank No.1 for Anandwadi Tq. Ashti, District: Beed. From three survey numbers belonging to the respondents herein, total 82-R land was acquired for the aforesaid project. The acquired land is situated at village Saratewadgaon. Notification under section 4 of the Land Acquisition Act, 1994 (herein after referred to as 'The Act') was published in that regard in the Govt. gazette on 4.9.2003 and the Award under section 11 of the Act came to be passed on 23.1.2006. The Special Land Acquisition Officer (for short SLAO) had fixed the market value of the acquired land at Rs.590/- per R and has accordingly offered the amount of compensation.

3 Since the amount so offered by the SLAO was not acceptable to the claimants, application under section 18 was preferred by the claimants to the Collector, Beed, which was in turn forwarded to the Civil Court for adjudication. The claimants had claimed compensation for the acquired land at Rs.2,500/- per R. In order to substantiate the claim so raised, the claimants had placed on record three sale instances, respectively at Exhibits 17, 18 and 19. No evidence was adduced on behalf of the State. Learned Reference Court after having assessed the oral and documentary evidence brought on record before it, determined

the market value of the acquired land at Rs.2,000/- per R and accordingly enhanced the amount of Compensation. The Reference Court has also passed an order for grant of all statutory benefits and the interest on the enhanced amount of compensation under the relevant provisions of the Act. Aggrieved by the said Judgment & Award, State has preferred the present appeal.

4 Mr. S.P. Deshmukh, learned AGP appearing for the State assailed the impugned Judgment & Award on several grounds. Learned AGP submitted that, the reference Court has failed in properly appreciating the evidence on record and has unreasonably enhanced the amount of compensation. The learned AGP further submitted that, the sale instance at Exh.18 which has been relied upon by the reference Court in determining the amount of compensation of the acquired land was pertaining to an irrigated land, as such, the same rate should not have been awarded for the acquired land which is an un-irrigated land. Learned AGP submitted that, even if the sale instance at Exh.18 was to be relied upon, the compensation which could have been awarded by the learned Reference Court must have been at half of the rate of the said compensation and not more than that. Learned AGP therefore prayed for setting aside the impugned

Judgment and award.

5 Mr. C.K. Shinde learned counsel appearing for the respondents i.e. original claimants supported the impugned Judgment. Learned counsel submitted that, the Reference Court has objectively assessed the evidence placed on record. Learned counsel submitted that, though sale instance at Exh.17 was much pressed by the claimants, wherein the price received to the land, which was subject matter of the said sale deed was at RS.5,000/- per R, the learned Reference Court has discarded said evidence and has preferred to consider the sale instance at Exh.18 for determining the amount of compensation for the acquired land. Learned counsel submitted that, the trial Court has not committed any error in determining the market value of the acquired land and accordingly in enhancing the amount of compensation. Learned counsel, therefore, prayed for dismissal of the appeal.

6 I have carefully considered the submissions made by learned AGP and learned counsel appearing for the original claimants. I have perused the impugned Judgment as well as the evidence on record.

7 Admittedly, the claimants only have adduced the evidence before the reference Court. The State has not adduced any oral or

documentary evidence. The claimants have placed on record three stale instances respectively at Exh.17, 18 and 19 in support of their contentions raised in the reference applications. Perusal of the sale deed at Exh.17 reveals that vide the said sale deed, 8-R land situated at Saratewadgaon was sold by registered sale deed executed on 6.7.1999 for consideration of Rs.41,000/- i.e. at Rs.5,000/- per R. The sale deed at Exh.18 pertains to the sale in respect of 80 R land situated at village Saratewadgaon executed on 17.8.2000 for consideration of Rs.1,75,000/- i.e. at Rs.2,187 per R. Exh.19 pertains to the sale deed executed for 14 R land situated at village Saratewadgaon on 26.6.2000 for the value of Rs.25,000/- which comes to Rs.1785 per R. The Reference Court, in para 6 of the impugned Judgment has elaborately discussed the evidence so brought on record by the claimants in the form of sale instances.

8 Perusal of the discussion so made by the learned Reference Court reveals that, the Reference Court has preferred not to rely upon the sale instance at Exh.17 observing that, the same was for small piece of land and most probably was for the non-agriculture purpose. The Reference Court has preferred to rely upon the sale instance at Exh.18 for the reason that, it was pertaining to 80-R land and was executed on 17.8.2000 i.e. much prior to issuance

of notification under section 4, by which the subject lands were acquired. The discussion made by the Reference Court further reveals that, the reference Court has also taken care, while determining the market value of the acquired land, by observing that, the land which was subject matter of Exh.18 was also having right to use the well-water to the extent of 12 paisa. (In the Judgment, the reference Court has incorrectly mentioned it as the share of 12 Anas. However, perusal of the sale deed at Exh.18 reveals that the share was 12 paisa and not 12 anas). The Reference Court has accordingly deducted amount of Rs.15,000/- while determining the market value of the acquired land. It appears to me that, the reference Court has adopted very correct method and has rightly determined the market value of the acquired land.

9 Mr. C.K. Shinde, learned counsel appearing for the claimants has also brought to my notice that, in one of the acquired lands, there was existence of a well and claimant in his deposition has deposed that Bagayat crops used to be taken by them. 7/12 Extracts of aforesaid land are placed on record which evidence existence of the well in survey No.53/1 situated at Saratewadgaon.

10 In view of the fact that the sale instance which has been relied upon by the reference Court was also pertaining to the land situated at village Saratewadgaon and was executed prior to three years of issuance of notification under section 4 of the Act, it does appear to me that the Reference Court has determined the market value of the acquired land properly and not on higher side. The State has failed in establishing that, the market value as has been determined by the Court, is not based on evidence on record or that, it was in excess of the prevailing market value. The appeal filed by the State appears to be devoid of any substance and deserves to be dismissed and it is accordingly dismissed.

11 Civil Application, if any stands disposed-of.

(P.R. BORA, J)

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